

EXHIBIT 10

SUBJECT TO RULE OF EVIDENCE 408

CONFIDENTIAL AMENDMENT TO
CONFIDENTIAL/TRADE SECRET STIPULATION

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This Amendment to the Confidential/Trade Secret Stipulation Between ATI and U S WEST ("Agreement"), is hereby entered into by Qwest Corporation ("Qwest"), formerly known as U S WEST, Inc., and Eschelon Telecom, Inc. ("Eschelon"), formerly known as Advanced Telecommunications, Inc., d/b/a Cady Communications, Inc., Cady Telemanagement, Inc., American Telephone Technology, Inc., Electro-Tel, Inc., and Intelicom, Inc., (hereinafter referred to as the "Parties" when referred to jointly) on this 15th day of November, 2000. This Amendment adds terms to the Confidential/Trade Secret Stipulation Between ATI and U S WEST dated February 28, 2000. The Parties acknowledge the recitals and terms contained in the Confidential/Trade Secret Stipulation Between ATI and U S WEST and seek to resolve differences which existed between the Parties as of that date, and continue as of the date of this Agreement, including differences relating to service quality.

ADDITIONAL RECITALS

1. Disputes have arisen between the Parties as to the effective date of Eschelon's ability to provide services through the unbundled network element ("UNE") platform. Eschelon claims that it was eligible to receive platform rates as of March 1, 2000.
2. Qwest believes that Eschelon was unable to provide services through the unbundled network element platform as of March 1, 2000.
3. In an attempt to finally resolve the issues in dispute and to avoid delay and costly litigation, the Parties voluntarily enter into this Confidential Agreement to resolve all disputes, claims and controversies between the Parties, as of the date of this Confidential Agreement that relate to the matters addressed herein, and Eschelon releases Qwest from any claims regarding the issue as described herein.

CONFIDENTIAL AGREEMENT

1. The Parties enter into this Agreement in consideration for the terms described below, and Eschelon's release of any claims that can or could have been brought against Qwest because Eschelon was providing services through resale of finished services instead of providing service through unbundled network elements. Eschelon claims that it had the right to elect platform prices as of March 1, 2000, while Qwest disagrees with Eschelon's claim, as described above.

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2. Eschelon agrees to purchase from Qwest, under this agreement or any other agreement between the parties, at least \$15 million (fifteen million dollars) of telecommunication services and products between October 1, 2000 and September 30, 2001. In consideration for Eschelon's agreement to make such purchases and for such other good and valuable consideration set forth in this agreement and documented in Qwest's November 15, 2000 letter, Qwest agrees to pay Eschelon \$10 million by no later than November 17, 2000 to resolve all issues, outstanding through the date of execution of this agreement, related to the UNE platform and switched access. Further, Qwest will pay to Eschelon the revenue Qwest billed to IXCs at Qwest's established switched access rates for Eschelon platform end users for usage for the month of October 2000. Qwest will pay this amount to Eschelon within 30 days of the date Qwest receives WTN information for Eschelon for all of October 2000. For any month (or partial month), from November 1, 2000 until the mechanized process is in place, during which Qwest fails to provide accurate daily usage information for Eschelon's use in billing switched access, Qwest will credit Eschelon \$13.00 (or pro rata portion thereof) per Platform line per month as long as Eschelon has provided the WTN information to Qwest. After the mechanized process is in place, Eschelon and Qwest will use the established escalation procedures if a dispute arises. Qwest will credit the IXC and other companies for daily usage traffic that Qwest provides to Eschelon to bill to the IXC (to eliminate double billing).

In the event that Eschelon does not purchase, under this agreement or any other agreement, \$15,000,000.00 (fifteen million dollars) in telecommunications services and/or products within the time frame set forth above, Eschelon shall, by December 31, 2001, make a pro rata refund of the payment received from Qwest.

3. Eschelon shall provide to Qwest consulting and network-related services, including but not limited to processes and procedures relating to wholesale service quality for local exchange service ("Services"). These Services will address numerous items, including loop cutover and conversion, repair, billing and other items agreed upon by the Parties. The Services may include all lines of business and methods of local market entry used by Eschelon. Eschelon agrees to utilize knowledgeable and experienced personnel for the Services. Eschelon further agrees to assign, upon request, up to two full time representatives dedicated to working with the Qwest account team or other Qwest organizations to facilitate handling of provisioning issues. The Parties agree to meet together (via telephone, live conference, or otherwise) as necessary to facilitate provisioning of the Services. Executives from both companies agree to address and discuss the progress of the Services at quarterly meetings to begin in 2001 and continue through the end of 2005. In consideration of Eschelon's agreement to provide Services and for such good and valuable consideration set forth in this agreement, Qwest agrees to pay

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Eschelon an amount that is ten percent (10%) of the aggregate billed charges for all purchases made by Eschelon from Qwest from November 15, 2000 through December 31, 2005. Eschelon will invoice Qwest annually. Payment is due within 30 days of the invoice date. In the event that the Confidential Purchase Agreement between Eschelon and Qwest (as of the same date as this Agreement) is terminated, this paragraph of this Agreement also terminates simultaneously with termination of that Confidential Purchase Agreement and any payments made pursuant to this paragraph as of the date of termination will be promptly returned to Qwest. In addition, if Eschelon fails to meet its purchase commitments under sections 2, 2.1, 2.2, 2.3, 2.4 or 2.5 of the Confidential Purchase Agreement, Eschelon will promptly return to Qwest any payments made pursuant to this section.

4. If the Parties fail to finalize the Implementation Plan by April 30, 2001, as required by the Parties' Escalation Procedures Agreement, they agree to immediately terminate the Purchase Agreement, the Confidential Billing Settlement Agreement, this Amendment to the Confidential/Trade Secret Stipulation, the Escalation Procedures Agreement, and the Interconnection Agreement Amendment, all dated November 15, 2000, and cooperate in good faith to determine and promptly return to each other all of the economic benefits each received from the other in consequence of those Agreements. Moreover, all of the claims, whether in law or in equity, that either Party released or discharged in those Agreements shall be restored to them.

5. The Parties will address in their quarterly meetings appropriate price adjustments for the telecommunications services and products purchased by Eschelon and Qwest in the preceding quarter.

6. For valuable consideration mentioned above, the receipt and sufficiency of which are hereby acknowledged, Eschelon does hereby release and forever discharge Qwest and its associates, owners, stockholders, predecessors, successors, agents, directors, officers, partners, employees, representatives, employees of affiliates, employees of parents, employees of subsidiaries, affiliates, parents, subsidiaries, insurance carriers, bonding companies and attorneys, from any and all manner of action or actions, causes or causes of action, in law, under statute, or in equity, suits, appeals, petitions, debts, liens, contracts, agreements, promises, liabilities, claims, affirmative defenses, offsets, demands, damages, losses, costs, claims for restitution, and expenses, of any nature whatsoever, fixed or contingent, known or unknown, past and present asserted or that could have been asserted or could be asserted in any way relating to or arising out of the disputes/matters addressed in "Additional Recitals" paragraphs 1 and 2 above, including all disputes related to the UNE platform and switched access.

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7. The terms and conditions contained in this Confidential Agreement shall inure to the benefit of, and be binding upon, the respective successors, affiliates and assigns of the Parties.

8. Eschelon hereby covenants and warrants that it has not assigned or transferred to any person any claim, or portion of any claims which is released or discharged by this Confidential Agreement.

9. The Parties agree that they will keep the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Confidential Agreement strictly confidential. The Parties further agree that they will not communicate (orally or in writing) or in any way disclose the substance of the negotiations and/or conditions of this settlement and the terms or substance of this Agreement to any person, judicial or administrative agency or body, business, entity or association or anyone else for any reason whatsoever, without the prior express written consent of the other Party unless compelled to do so by law or unless Eschelon pursues an initial public offering, and then only to the extent that disclosure by Eschelon is necessary to comply with the requirements of the Securities Act of 1933 or the Securities Exchange Act of 1934. In the event Eschelon pursues an initial public offering, it will: (1) first notify Qwest of any obligation to disclose some or all of this Confidential Agreement; (2) provide Qwest with an opportunity to review and comment on Eschelon's proposed disclosure of some or all of this Confidential Agreement; and (3) apply for confidential treatment of the Confidential Agreement. It is expressly agreed that this confidentiality provision is an essential element of this Confidential Agreement and negotiations, and all matters related to these matters, shall be subject to Rule 408 of the Rules of Evidence, at the federal and state level.

10. In the event either Party initiates arbitration or litigation regarding the terms of this agreement or has a legal obligation which requires disclosure of the terms and conditions of this Confidential Agreement, the Party having the obligation shall immediately notify the other Party in writing of the nature, scope and source of such obligation so as to enable the other Party, at its option, to take such action as may be legally permissible so as to protect the confidentiality provided in this Agreement.

11. This Confidential Agreement constitutes an agreement between the Parties and can only be changed in a writing or writings executed by both Parties. Each of the Parties forever waives all right to assert that this Confidential Agreement was the result of a mistake in law or in fact.

12. This Confidential Agreement shall be interpreted and construed in accordance with the laws of the State of Minnesota, and shall not be interpreted in favor or against any Party to this Agreement.

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13. The Parties have entered into this Confidential Agreement after conferring with legal counsel.

14. In the event that any provision of this Confidential Agreement should be declared to be unenforceable by any administrative agency or court of law, either Party may initiate an arbitration under the provisions of section 14 below within 90 days of such declaration, to determine the impact of such declaration on the remainder of this Confidential Billing Settlement Agreement. The arbitrator shall have the authority to determine the materiality of the provision and any appropriate remedies, including voiding the agreement in its entirety. If neither Party initiates such an arbitration within 90 days, the remainder of the Confidential Agreement shall remain in full force and effect, and shall be binding upon the Parties hereto as if the invalidated provisions were not part of this Confidential Agreement.

15. Any claim, controversy or dispute between the Parties in connection with this Confidential Agreement shall be resolved by private and confidential arbitration conducted by a single arbitrator engaged in the practice of law under the then current rules of the American Arbitration Association. The arbitration shall be conducted in Minneapolis, Minnesota. Each Party shall have the right to seek from a court of appropriate jurisdiction equitable or provisional remedies (such as temporary restraining orders, temporary injunctions, and the like) before arbitration proceedings have been commenced and an arbitrator has been selected. Once an arbitrator has been selected and the arbitration proceedings are continuing, thereafter the sole jurisdiction with respect to equitable or provisional remedies shall be remanded to the arbitrator. Any arbitrator shall be a retired judge or an attorney who has been licensed to practice for at least ten (10) years and is currently licensed to practice in the state of Minnesota. The arbitrator shall be selected by the Parties within fifteen (15) business days after a request for arbitration has been made by one of the Parties hereto. If the Parties are unable to agree among themselves, the Parties shall ask for a panel of arbitrators to be selected by the American Arbitration Association. If the Parties are unable to select a sole arbitrator from the panel supplied by the American Arbitration Association within ten (10) business days after such submission, the American Arbitration Association shall select the sole arbitrator. The Federal Arbitration Act, 9 U.S.C. §§ 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator shall only have the authority to determine breach of this Agreement and award appropriate damages, but the arbitrator shall not have authority to award punitive damages. The arbitrator's decision shall be final and binding and may be entered in any court having jurisdiction thereof. Each Party shall bear its own costs and attorneys' fees and shall share equally in the fees and expenses of the arbitrator, except that the arbitrator shall have the discretion award reasonable attorneys' fees and costs in favor of a Party if, in the opinion of the arbitrator, the dispute arose because the other Party was not acting in good faith.

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16. The Parties acknowledge and agree that they have a legitimate billing dispute about the issues described in this Confidential Agreement and that the resolution reached in this Agreement represents a compromise of the Parties' positions. Therefore, the Parties agree that resolution of the issues contained in this Agreement cannot be used against the other Party, including but not limited to admissions.

17. This Confidential Agreement may be executed in counterparts and by facsimile.

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IN WITNESS THEREOF, the Parties have caused this Confidential Agreement to be executed as of this 15th day of November 2000.

Escheion Telecom, Inc.

By: [Signature]

Title: President - CEO

Date: 11/15/00

Qwest Corporation

By: _____

Title: _____

Date: _____

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Q110047

IN WITNESS THEREOF, the Parties have caused this Confidential Agreement to be executed as of this 15th day of November 2000.

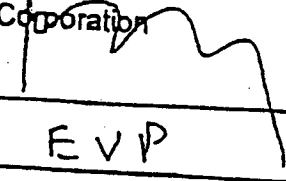
Eschelon Telecom, Inc.

By: _____

Title: _____

Date: _____

Qwest Corporation

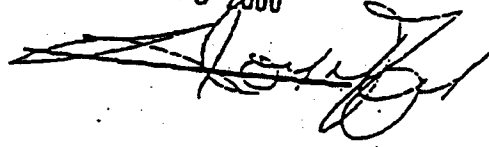
By: 

Title: EVP

Date: 11-15-00

Approved as to legal form

NOV 15 2000



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EXHIBIT 11



Qwest
1801 California Street, Suite 2350
Denver, Colorado 80202
Phone 303-896-5851
Facsimile 303-896-7473

EXHIBIT

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Audrey McKenney
Senior Vice President
Wholesale Markets Business Development

CONFIDENTIAL AND PRIVILEGED
SUBJECT TO RULE OF EVIDENCE 408

July 3, 2001

Richard A. Smith
President and Chief Operating Officer
Eschelon Telecom, Inc.
730 Second Avenue South
Suite 1200
Minneapolis, MN 55402

Re: Status of Switched Access Minute Reporting

Dear Rick:

[Trade Secret Data Begins]

Over time, Eschelon has added switches in additional markets and has started to move away from resale to Unbundled Network Element Platform ("UNE-P") for customers not served by those switches. In the course of adding switches and increasing the number of its customers served by those switches in multiple states within Qwest's region, Eschelon has noted a discrepancy between the access minutes recorded for Eschelon customers served by Eschelon's switches (Eschelon's On-Net customers) and the access minutes reported to Eschelon by Qwest for Eschelon UNE-P customers served by Qwest's switches (Eschelon's Off-Net customers). Although Qwest believes that it has accurately recorded switched access minutes, we have agreed to work with Eschelon to verify the accuracy of such records and to determine the reasons why the parties' systems are reporting a different number of switched access minutes. Factors that could potentially be causing the discrepancy include, among other factors, different usage characteristics of Eschelon's On-Net and Off-Net customers, recording and reporting differences between Eschelon's and Qwest's switches, inaccurate reporting by Eschelon to Qwest of Eschelon's Off-Net WTNs, and under reporting of Off-Net access minutes by Qwest.

Eschelon, Inc. has asserted that the tapes which Qwest Corporation provides to Eschelon recording switched access minutes going on the ports of its platform services are lower than the minutes that Eschelon is experiencing based on minutes going through Eschelon's switch. Based on Eschelon's concern, and

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Qwest's desire to ensure that its recordings are accurate, Qwest has agreed to perform an audit with Eschelon.

Since November 2000, as an interim measure, Qwest has been paying Eschelon each month an Interim Amount, which is the difference between thirteen dollars (\$13) per line per month and the amount that Eschelon was able to bill IXCs for switched access, per line, based upon the switched access minutes reported to Eschelon by Qwest. Eschelon has devoted substantial internal and external resources to switched access issues, including resources associated with the audit, traffic studies, and hiring of personnel with expertise in access issues. In consideration for this, as of January 1, 2001 and continuing until Qwest and Eschelon agree to do otherwise, Qwest will increase the Interim Amount to the difference between \$16 per line per month and the amount that Eschelon is able to bill IXCs for switched access, based upon the switched access minutes reported to Eschelon by Qwest.

In order to determine whether Qwest's reporting of access minutes has been correct, the parties are undertaking a joint analysis, including an audit of the switched access minutes reported by Qwest and Eschelon (the "Audit"). The Audit will proceed in accordance with the scope of work previously agreed to by the parties. Once the Audit is completed, the parties have agreed to true up the difference between \$13 per line and the actual amount that Eschelon should have been able to bill to its carrier customers as calculated above (less any amount that Eschelon is able to backbill to its carrier customers) based on its tariffed rate.

Eschelon has also noted an issue relating to access records for Qwest's intraLATA toll traffic terminating to customers served by an Eschelon switch. The ongoing analysis and resources expended by Eschelon and Qwest will also address this issue. As of June 1, 2001, until the Parties agree that the issue is resolved, Qwest will pay Eschelon \$2.00 per line per month for such traffic.

Using the results of the Audit, the parties will also negotiate the terms and conditions of any subsequent analysis or procedures to be followed, and for resolution of future discrepancies between the switched access minutes indicated by Qwest and the minutes recorded or believed to be accurate by Eschelon.

Qwest and Eschelon want to avoid complaints and find business solutions to their problems. In working on service issues, while the audit is occurring and depending upon the results of the audit and the negotiations, Eschelon agrees that it will not seek payment of sums due from Qwest to Eschelon, if any, related to the Direct Measures of Quality ("DMOQs") in Minnesota pursuant to the Stipulation and Agreement entered into by the Parties on February 29, 2000. The Parties will meet upon the findings of the audit and will determine whether the DMOQs are appropriate at that time.

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Richard A. Smith
July 3, 2001
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We look forward to working with Eschelon and completing the audit process.¹

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Sincerely,


Audrey McKenney

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¹ Notwithstanding anything herein to the contrary, we also acknowledge that both parties may rely upon, and make use of the contents of this letter as accurately setting forth the matters agreed upon. Trade Secret Data Ends]

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SUBJECT TO RULE OF EVIDENCE 408

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EXHIBIT 12

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS
100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA DEPARTMENT OF COMMERCE
121 Seventh Place East, Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of a Complaint of the
Minnesota Department of Commerce
Against Qwest Corporation Regarding
Unfiled Agreements

MPUC Docket No. P-421/C-02-197
OAH Docket No. 6-2500-14782-2
MPUC Docket No. P-421/CI-01-1371
OAH Docket No. 7-2500-14486-2

SUPPLEMENTAL TESTIMONY OF W. CLAY DEANHARDT

1 **Q: Please introduce yourself.**

2 A: My name is Clay Deanhardt. I previously provided written testimony in the 197
3 Docket on April 22, 2002 and testified in person at the first hearings in the 197 Docket. I
4 also provided written testimony in the 1371 Docket on June 12, 2002.

5 **Q: What is the purpose of your testimony?**

6 A: The purpose of my testimony is to explain the results of the investigation I
7 undertook on behalf of the Department of Commerce ("Department") to determine
8 whether Qwest Communications Corporation ("Qwest") had entered into a secret, oral
9 agreement to provide McLeodUSA, Inc. ("McLeod") with a discount on all purchases
10 made by McLeod from Qwest.

11 **Q: How did you conduct your investigation?**

12 A: I drafted discovery requests that the Department sent to both Qwest and McLeod.
13 Those requests included interrogatories, document requests, and requests that Qwest

1 admit or deny certain facts related to the Department's allegations. I then reviewed all of
2 Qwest's responses, including every document produced by Qwest as of the date of this
3 testimony. When appropriate, I drafted follow-up requests to clarify the facts or to
4 collect new information based on Qwest's responses. I also interviewed witnesses from
5 McLeod regarding the alleged agreement. In addition, I was present at the depositions of
6 Qwest's Audrey McKenney, McLeod's Lori Deutmeyer and Blake Fisher, a retired
7 senior executive from McLeod.

8 **Q: What conclusions, if any, have you reached?**

9 A: I have concluded that on or about October 26, 2000, Qwest and McLeod entered
10 into an oral agreement whereby Qwest would provide discounts to McLeod for all
11 purchases made by McLeod from Qwest. The discount ranged from 6.5% to 10%
12 depending on the volume of purchases made by McLeod from Qwest over the course of a
13 year. The discount applied to all purchases McLeod made from Qwest, not just
14 purchases of the wholesale services Qwest is required to provide under the
15 Telecommunications Act of 1996 (the "Act").

16 So, for example, the discount applied both to McLeod's purchase of unbundled
17 network elements ("UNEs") under the Act as well as to its payments for switched access,
18 wholesale long distance and tariffed retail services (which are not covered under the Act).
19 The discount applied to all purchases made by McLeod both within Qwest's 14-state
20 ILEC territory and outside of that region. The discount is only available to McLeod if it
21 meets minimum purchase volume commitments from Qwest.

1 **Q: Upon what is your conclusion based?**

2 A: My conclusion is based on my review of documents provided by Qwest and
3 McLeod; their written responses to information requests from the Department; the
4 interviews I conducted on behalf of the Department; the depositions of Ms. McKenney,
5 Ms. Deutmeyer and Mr. Fisher, and affidavits signed by Ms. Deutmeyer and Mr. Fisher
6 recounting the details of the discount agreement. My conclusion is also based on my own
7 business experience, which includes experience negotiating and executing business
8 agreements with Qwest and other incumbent local exchange carriers (ILECs).

9 **Q: Please explain the context in which Qwest and McLeod entered into the**
10 **discount agreement.**

11 A: Based on my interviews and the documents produced by Qwest and McLeod, the
12 following became clear:

13 Two things happened in 2000 that precipitated this agreement. The first was that it
14 became certain that ILECs are required to provide CLECs with access to some UNEs in a
15 combined form. This combination of UNEs is referred to as "UNE-P" or "UNE-
16 Platform." The second was that U S WEST merged with Qwest.

17 Before 2000, McLeod's relationship with Qwest was primarily that of a reseller.
18 That is, McLeod purchased services from Qwest and resold them to McLeod's customers.
19 Most of the services resold by McLeod were Centrex services.

20 McLeod recognized, however, that it could reduce its costs (and thereby increase
21 net revenues) by immediately converting its resold lines to UNE-P lines and later moving
22 as much traffic as possible off of Qwest's network altogether. At the same time, the

1 newly merged Qwest made overtures to McLeod that it wanted to establish a better
2 business relationship with McLeod and treat it more like a customer than a competitor.¹

3 So McLeod and Qwest entered into negotiations in the late summer / early fall of
4 2000 to create a new business relationship that would be beneficial to both. The new
5 Qwest, according to its representatives, wanted to keep and even increase McLeod's
6 traffic on its network. McLeod, on the other hand, wanted to reduce costs and increase
7 service quality.

8 The leading persons involved in these negotiations from Qwest were Greg Casey,
9 Executive Vice President for Wholesale Markets at the time; Audrey McKenney, Sr. Vice
10 President of Wholesale Markets; and Arturo Ibarra, Director of Business Development.
11 From McLeod, the lead negotiators were Blake Fisher, Group Vice President and Chief
12 Planning and Development Officer at the time; Jim Balvanz, Vice President of Finance;
13 and Stacey Stewart, Vice President of ILEC Relations.

14 The negotiations resulted in six written agreements that the parties entered into on
15 October 26, 2000. The key component of those agreements was the creation of a new
16 product called UNE Star (or UNE-M when purchased by McLeod). The UNE Star
17 product is a flat-rated UNE platform product that, in essence, converted McLeod resold
18 lines directly to UNE-P. One of the six agreements McLeod and Qwest entered into on
19 October 26 is the Eighth Amendment to their interconnection agreement. That
20 amendment set out the publicly disclosed terms and conditions for the UNE Star product.

¹ See Exhibit 451 to my testimony, which is a true copy of an e-mail produced by McLeod to the Department.

1 Two of the other written agreements are the purchase agreements between
2 McLeod and Qwest that I discuss in more detail later in my testimony. Another of the six
3 agreements is the document identified as McLeod Agreement II in the Department's
4 complaint in the 197 Docket. The final two agreements are billing settlement agreements
5 that move substantial sums of money back and forth between McLeod and Qwest.

6 In addition to the six written agreements, Qwest and McLeod also entered into
7 two oral agreements. The first is the discount agreement, which ties to McLeod's
8 purchase agreement with Qwest. The second is McLeod's agreement not to participate in
9 proceedings considering Qwest's Section 271 application.

10 I should also point out that, as I explained in my June 12, 2002 testimony in the
11 1371 docket, there is another set of regular payments in addition to the discount payments
12 that Qwest makes to McLeod as a result of these October 26 agreements. These
13 additional payments refund to McLeod the difference between the amount it actually pays
14 Qwest for UNE-Star and the amount it is supposed to pay under the Eighth Amendment
15 to its interconnection agreement. These separate payments are necessary because
16 Qwest's billing system is not able to bill McLeod the correct amount for UNE-Star.

17 **Q: Who did you interview during your investigation?**

18 **A:** On May 23, 2002 I interviewed David Conn, a lawyer from McLeod. Mr. Conn
19 gave me an overview of the relationship between McLeod and Qwest and he confirmed
20 that Qwest had agreed orally to provide McLeod with a volume discount on all purchases
21 made by McLeod from Qwest. Mr. Conn, however, was not directly involved in
22 negotiating the agreements.

1 Therefore, on June 3 and 4 I interviewed Stacey Stewart, Lori Deutmeyer, and
2 Todd McNally, all of whom work for McLeod. Mr. Stewart was involved in negotiating
3 the many agreements that Qwest and McLeod entered into on October 26, 2000,
4 including the discount agreement. He confirmed that the discount agreement existed. He
5 also informed me that Blake Fisher was the lead negotiator for McLeod during the
6 negotiations that resulted in the agreement.

7 Ms. Deutmeyer is the person at McLeod responsible for verifying that Qwest pays
8 McLeod the full amount of the discount owed to it. She explained how the discount is
9 calculated. At my request, she also provided the Department and me with documents
10 reflecting those calculations.

11 I interviewed Mr. McNally because of his knowledge of issues related to the 1371
12 docket. I discuss that information in my June 12, 2002 testimony in that docket. Mr.
13 McNally had no information related to the 197 Docket.

14 On June 6, 2002 I interviewed Blake Fisher, who had retired from McLeod in
15 May 2002. Mr. Fisher confirmed that he was McLeod's lead negotiator with Qwest for
16 the various agreements that the parties entered on October 26, 2000. He also confirmed
17 that Qwest had agreed to provide McLeod with a discount based on the volume of
18 purchases made by McLeod from Qwest.

19 **Q: How did you follow up on those interviews?**

20 **A:**To memorialize the witness statements, I prepared draft affidavits for Ms.
21 Deutmeyer and Mr. Fisher based on my interview notes. I provided those affidavits to
22 McLeod's in-house counsel, and Ms. Deutmeyer and Mr. Fisher reviewed their respective
23 affidavits for accuracy. Both made changes / edits to their affidavits and then executed

1 them. A true copy of Ms. Deutmeyer's affidavit is attached as Exhibit 401. Mr. Fisher's
2 affidavit and its exhibits are attached as Exhibits 3 and 4 to the transcript of his
3 deposition taken on June 27, 2002. A true copy of that transcript is attached to my
4 testimony as Exhibit 402.

5 **Q: Please summarize the points in Mr. Fisher's affidavit that are important to**
6 **your investigation.**

7 A: According to Mr. Fisher, McLeod approached U S WEST before its merger with
8 Qwest about converting McLeod's resold lines to UNE-P. At that point, the parties
9 began negotiations to create a new product that would leave McLeod's customers on the
10 same physical telephone lines they already had but give McLeod the benefit of better
11 pricing across U S WEST's region. The parties, however, did not agree on acceptable
12 pricing before the merger.

13 Once the merger happened, Qwest made overtures to McLeod that it wanted to
14 improve its relationship with McLeod as a customer. McLeod and the new Qwest
15 subsequently restarted their conversations about converting McLeod's resold Centrex
16 lines into UNE-Platform lines.

17 As I described earlier, Qwest and McLeod did reach an agreement on
18 implementation and pricing for the new UNE-P product called UNE Star. Mr. Fisher
19 explains, however, that McLeod was not satisfied that the pricing was low enough for
20 McLeod to keep its traffic on Qwest's network (as compared to installing its own
21 switches and going off-network). Qwest and McLeod therefore negotiated an additional
22 discount agreement. In short, McLeod committed to purchasing specified volumes of
23 Qwest products under a take-or-pay agreement and Qwest agreed to provide McLeod

1 with discounts if McLeod exceeded its take-or-pay commitments. A true copy of the

2 McLeod take-or-pay agreement is attached as Exhibit 403.

3 **Q: What is a take-or-pay agreement?**

4 A: It is an agreement that Company A (in this case, McLeod) will purchase a
5 specified quantity of goods and/or services from Company B (in this case, Qwest) over a
6 specified period of time. If Company A does not meet its purchase commitment, then
7 Company A pays Company B the difference between the commitment amount and the
8 amount actually purchased by Company A. Thus, Company A will either "take" the
9 goods or "pay" the difference.

10 Take-or-pay agreements are used by sellers to secure a revenue stream /
11 commitment. Buyers typically enter into them because they are getting something in
12 return – generally a discount as compared to purchasing the same amount of goods and
13 services without the commitment.

14 **Q: What is the scope of the discount agreement?**

15 A: As Mr. Fisher explains, the discount applied to all products and services
16 purchased by McLeod from Qwest inside and outside of Qwest's 14-state ILEC territory.

17 **Q: Why is the discount agreement not in writing?**

18 A: When I interviewed him, Mr. Fisher said that he had asked Greg Casey and
19 Audrey McKenney from Qwest to put the discount agreement in writing, but they would
20 not do so. Mr. Fisher confirmed this under oath in his deposition at page 58 line 6
21 through page 59 line 9.

1 **Q: Why would Ms. McKenney and Mr. Casey not put the agreement in writing?**

2 A: According to Mr. Fisher, they were concerned that other CLECs might feel
3 entitled to the same discount if the agreement were written and made public. Mr. Fisher
4 also confirmed this in his deposition at page 59 lines 10 - 24.

5 **Q: Did Qwest propose an alternative?**

6 A: Yes. Mr. Fisher expressed concern over the enforceability of the oral agreement
7 for the discount. Qwest suggested that it would enter into its own take-or-pay agreement
8 to purchases products from McLeod. According to Mr. Fisher's affidavit, the amount of
9 the Qwest take-or-pay commitment was calculated by applying the 8% discount factor to
10 a projected amount of purchases by McLeod from Qwest. A true copy of the Qwest take-
11 or-pay agreement provided to the Department by Qwest is attached as Exhibit 404.

12 **Q: After October 2000, did Qwest honor the oral discount agreement?**

13 A: Yes, it did. As Ms. Deutmeyer's affidavit explains, Qwest made payments to
14 McLeod for what Qwest called the "Preferred Vendor Plan" for October 2000 through
15 September 2001. According to Ms. Deutmeyer's affidavit, Qwest calculated the amount
16 of the payment by applying the 10% discount factors to all purchases made by McLeod
17 from Qwest during the relevant time period. One of the spreadsheets Qwest used to
18 calculate the discount amount is attached as Trade Secret Exhibit 1 to Ms. Deutmeyer's
19 affidavit. As Ms. Deutmeyer's affidavit indicates, Qwest created this spreadsheet. Qwest
20 confirmed this in its response to DOC 209, which is attached as Exhibit 405 to my
21 testimony.

1 **Q: Does the spreadsheet attached to Ms. Deutmeyer's affidavit contain any**
2 **other information to indicate Qwest's understanding that it was providing McLeod**
3 **with a discount?**

4 A: Yes. The spreadsheet is in Excel format, which I am familiar with and have used
5 on many occasions. The file name and the worksheet name are printed in the bottom
6 right-hand corner of each printed page of the Exhibit. Here, the file name is [BEGIN
7 TRADE SECRET] . [END TRADE SECRET]

8 **Q: How have you confirmed that the numbers on this spreadsheet were**
9 **calculated by applying the 10% discount to McLeod's purchases?**

10 A: Qwest confirmed this in its responses to a series of requests for admissions.
11 Qwest was asked to confirm that the numbers associated with Minnesota were calculated
12 by applying the 10% factor to the amount Qwest billed McLeod for the product or service
13 indicated on the spreadsheet during the month indicated on the spreadsheet. In each
14 case, Qwest admitted that the number was calculated in the way I just described. Qwest's
15 responses to DOC 257 – 292 on this subject are attached as Trade Secret Exhibit 406 to
16 my testimony.

17 **Q: Are there any other documents that confirm your conclusions and the**
18 **statements in Ms. Deutmeyer's affidavit regarding this spreadsheet?**

19 A: Yes. Attached as Exhibit 407 to my testimony is a true copy of a spreadsheet
20 titled [BEGIN TRADE SECRET] [END TRADE SECRET] that Qwest produced
21 in response to DOC 210. That request asked Qwest to produce all of Anthony
22 Washington's files regarding McLeod. Mr. Washington works for Ms. McKenney and is
23 one of two persons that Ms. Deutmeyer deals with primarily when obtaining McLeod's

1 discount payment from Qwest. I compared each of the figures found in the [BEGIN

2 **TRADE SECRET]**

[END TRADE SECRET]

3 **Q: Did you find any other spreadsheets similar to the one attached to Ms.**
4 **Deutmeyer's affidavit?**

5 **A:** Yes. Attached as Exhibit 408 to my testimony is a true copy of the spreadsheet I
6 found that calculates the discount for October 2000 through March 2001. Attached as
7 Exhibit 409 is a true copy of the spreadsheet calculating the discount for April 2001
8 through June 2001. Attached as Exhibit 410 is a true copy of the spreadsheet calculating
9 the discount for July 2001 through September 2001. Attached as Exhibit 411 is a true
10 copy of the spreadsheet calculating the discount for October 2001 through December
11 2001. Qwest produced all of these documents to the Department in response to requests
12 either for the specific spreadsheet or for Anthony Washington's or Arturo Ibarra's files
13 related to McLeod. Mr. Ibarra also works for Ms. McKenney and is Mr. Washington's
14 direct supervisor.

15 **Q: Were these files originally sent by Qwest to McLeod?**

16 **A:** Yes. As Ms. Deutmeyer's affidavit indicates, Qwest sends these files to McLeod
17 as part of the process of finalizing the discount payment. In addition, I was able to tie
18 exhibits 409 – 411 to transmittal e-mails produced by Qwest that show those files being
19 delivered to McLeod.

20 **Q: Did Qwest pay the amounts indicated on these spreadsheets to McLeod?**

21 **A:** It did for all the discounts due through September 2001. As Ms. Deutmeyer's
22 affidavit indicates, she would compare the amount on the spreadsheet she received from
23 Qwest to her own calculation of the discount amount owed and, if the numbers were

1 close, she would create and send an invoice to Qwest for the amount indicated on the
2 spreadsheets. The invoices for October 2000 through March 2001, April 2001 through
3 June 2001 and July 2001 through September 2001 are attached to her affidavit as Trade
4 Secret Exhibit 2. Qwest paid each of these invoices as evidenced by the wire transfer
5 confirmations attached as Trade Secret Exhibits 3 - 5 to Ms. Deutmeyer's affidavit.

6 **Q: Are there records from Qwest indicating that they made these payments?**

7 A: Yes. Qwest admitted to making the wire transfers referred to by Ms. Deutmeyer's
8 affidavit in its responses to DOC 171, 173 and 175, all of which are attached as Exhibit
9 413 to my testimony. In addition, Attached as Trade Secret Exhibit 412 to my testimony
10 are [BEGIN TRADE SECRET] [END TRADE SECRET] Qwest
11 produced these documents to the Department in its supplemental response to DOC No.
12 2220 in the 1371 Docket. Ms. McKenney confirmed her signature on the first two
13 documents in Exhibit 412 during her deposition on June 11, 2002.

14 **Q: Is there anything else about these records about which the Court should take**
15 **note?**

16 A: Yes. [BEGIN TRADE SECRET] [END TRADE SECRET]

17 **Q: What about the discount payments between September 2001 and today?**

18 A: E-mails produced by Qwest show that Qwest provided McLeod with Exhibit 411
19 calculating the amount due for the fourth quarter of 2001 (that is, October through
20 December 2001) in March 2002. As Ms. Deutmeyer's affidavit explains, her calculation
21 of the amount due for that quarter differed from Qwest's. As a result, McLeod and
22 Qwest exchanged several e-mails trying to reconcile the differences to come up with a
23 final amount that was due. They were still working on that task when the Department

1 began making inquiries about the discount agreement. Subsequently, at an April 30
2 meeting, Qwest put the payment of the fourth quarter discount on hold for what Mr.
3 Ibarra referred to as "undisclosed reasons" in an e-mail attached as Exhibit 6 to Ms.
4 Deutmeyer's affidavit.

5 I have been unable to determine what those "undisclosed reasons" are, although
6 there are indications in notes that Qwest provided from that meeting that Stephen Davis
7 has become involved in handling this matter for Qwest. Mr. Davis is Qwest's Senior
8 Vice President of Public Policy and Law, which suggests that payment of this discount
9 has become a regulatory issue for Qwest.

10 **Q: What other evidence demonstrates that Qwest agreed to provide this**
11 **discount to McLeod?**

12 **A:** There are three categories of documents that further evidence the agreement. The
13 first category includes the documents showing how the agreement was negotiated. The
14 second includes post-agreement documents from Qwest's files where Qwest refers to the
15 discount. The third are post-agreement documents from McLeod that refer to the
16 discount.

17 **Q: Please describe the documents from the negotiation of the agreement that**
18 **show the existence of the discount.**

19 **A:** These are the negotiation documents that I found, discussed in chronological
20 order (to the extent possible):

21 [BEGIN TRADE SECRET] [END TRADE
22 SECRET]

1 apply to all purchases made by McLeod from Qwest once McLeod reached negotiated
2 minimum revenue commitments. These negotiations were part of those that resulted in
3 the series of written agreements and the oral discount agreement that Qwest and McLeod
4 entered into on October 26, 2000.

5 **Q: What documents did you find from your second category – documents from**
6 **Qwest's files created after the agreement that refer to the discount?**

7 **A: [BEGIN TRADE SECRET] [END TRADE SECRET]**

8 **Q: What did you conclude from these documents?**

9 A: Based on my experience conducting business negotiations in a variety of settings
10 and working with Qwest / U S WEST when I was employed by Covad, these documents
11 are consistent with negotiation, deal evaluation and daily business communications.
12 These documents indicate that Qwest understood that it had agreed to give McLeod a
13 10% discount on all purchases and that Qwest considered how to account for that fact
14 when negotiating new deals with McLeod.

15 I also noted that Qwest never responded to any of the communications from
16 McLeod about the discount by stating that the discount did not exist. I would certainly
17 expect to see that kind of disclaimer if Qwest had not agreed to the discount.

18 **Q: Did Qwest and McLeod enter into any new agreements based on the follow-**
19 **on negotiations you just discussed?**

20 A: Not any of which I am aware.

21 **Q: Where did you find these documents?**

22 A: Qwest produced Exhibit 428 in response to the Department's request for all of
23 Arturo Ibarra's files related to McLeod. It produced Exhibits 452 and 453 in response to

1 the Department's request for all of Anthony Washington's files related to McLeod. The
2 remainder of these documents came from Ms. McKenney's files, and Qwest produced
3 them in its response to DOC 212, which asked for Ms. McKenney's files related to
4 McLeod.

5 **Q: Please describe the documents from your third category – those created by**
6 **McLeod after Qwest agreed to provide it with the discount.**

7 **A:** The first is the document that is Exhibit 4 to Mr. Fisher's affidavit. This is a
8 printout of a March 1, 2001 e-mail from Mr. Dupler to Mr. Balvanz in McLeod. Mr.
9 Dupler asks Mr. Balvanz a series of questions about the discount agreement after opening
10 his e-mail by saying **[BEGIN TRADE SECRET]** **[END TRADE SECRET]**
11 Mr. Fisher's affidavit confirms the accuracy of Mr. Balvanz's handwritten responses to
12 Mr. Dupler's questions. Those responses include Mr. Balvanz setting out the conditions
13 under which the discount applies. Those conditions are consistent with the October 22,
14 2000 "Qwest Counterproposal" that is attached as Exhibit 427.

15 The second document is a March 28, 2001 e-mail that Mr. Fisher sent to Stephen
16 Gray, McLeod's President. **[BEGIN TRADE SECRET]** **[END TRADE**
17 **SECRET]**

18 Finally, the third document is a May 18, 2001 draft version of the term sheet that
19 ultimately went to Qwest on May 21, 2001 (Exhibit 436). **[BEGIN TRADE SECRET]**
20 **[END TRADE SECRET]**

21 McLeod produced all three of these documents to the Department in its response
22 to Information Request No. 1224 in the Department's investigation into Qwest's conduct
23 that resulted in this docket.

16 A: No. To begin with, Mr. Fisher, Mr. Conn and Mr. Stewart all confirmed that the
17 oral discount agreement exists. In addition, Ms. Deutmeyer confirmed that Qwest has
18 been making payments under the oral agreement, the amounts of which are calculated by
19 applying 10% to the amount billed by Qwest to McLeod. Moreover, as discussed
20 throughout most of my testimony, I have found a large number of documents showing
21 that both Qwest and McLeod understood that Qwest had agreed to provide McLeod with
22 a purchase volume discount.

1 Just as importantly, Qwest has acknowledged in discovery responses that it made
2 additional payments to McLeod during 2001 for the telecommunications services it
3 actually purchased from McLeod. These payments were separate from those made by
4 Qwest under the Preferred Vendor Plan / discount agreement. Exhibit 448 to my
5 testimony is a true copy of a spreadsheet created by Qwest showing payments of
6 [BEGIN TRADE SECRET] [END TRADE SECRET] made by Qwest to
7 McLeod for [BEGIN TRADE SECRET] [END TRADE
8 SECRET]² In its response to DOC 358 attached as Exhibit 449, Qwest admitted that the
9 summary sheet at the beginning of Exhibit 448 shows payments actually made by Qwest
10 to McLeod.

11 The purchases reflected on Exhibit 448 are the types of purchases that would be
12 covered by the Qwest take-or-pay agreement attached as Exhibit 404. If Qwest's
13 explanation for the Preferred Vendor Plan payments were correct, then I would expect to
14 see [BEGIN TRADE SECRET] [END TRADE SECRET] I
15 have not seen any documents reflecting that kind of calculation in any of the documents
16 produced by Qwest to the Department.

17 To the contrary, the spreadsheets Qwest used to calculate the Preferred Vendor
18 Plan payments (See Exhibits 408 through 411) show that the payments were actually
19 calculated by applying a 10% factor to revenues generated in various categories including

² On July 22, 2002 Qwest produced a supplemental response to DOC 218 that included a spreadsheet in the same format as Exhibit 448 showing payments made by Qwest to McLeod for October through December 2000. A true copy of the document produced by Qwest is attached as Exhibit 455.

1 "Resale", "Collocation" and "Unbundled Loops." Qwest does not purchase these kinds
2 of services from McLeod, but McLeod does purchase these services from Qwest.
3 In fact, as I discussed previously, Qwest has admitted that the amount of the Preferred
4 Vendor Plan payments were calculated by multiplying the amounts Qwest billed to
5 McLeod by 10%. That calculation is consistent with the discount agreement confirmed
6 by Mr. Fisher and described in the many documents I have discussed. It is completely
7 inconsistent with the claim in Exhibit 447 **[BEGIN TRADE SECRET]**

8 **[END TRADE SECRET]**

9 **Q: Are there any other documents that led you to conclude that Qwest's**
10 **explanation is not accurate?**

11 **A:** Yes. As I already discussed, Qwest created several business case documents that
12 it used internally to evaluate various aspects of the McLeod deal as it negotiated with
13 McLeod in the fall of 2000 (Exhibit 426). In those documents, **[BEGIN TRADE**
14 **SECRET]** **[END TRADE SECRET]**

15 **Q: Did you find any documents supporting Qwest's explanation?**

16 **A:** I found only three Qwest documents (out of approximately eight boxes of
17 documents produced by Qwest) that are consistent with Qwest's explanation. Two of
18 them, however, were created only after the Department began investigating the discount
19 agreement. The third was created by a person not involved in the negotiations and
20 reflects a lack of understanding about the deal. All three documents are attached as
21 Exhibit 461 to my testimony.

22 **[BEGIN TRADE SECRET]**

[END TRADE SECRET]

1 **Q: Did you consider these documents before you reached the conclusions about**
2 **which you have testified?**

3 A: Yes, I did. They did not change those conclusions, though. Both **[BEGIN**
4 **TRADE SECRET]** **[END TRADE SECRET]** were created only after
5 the Department had filed its complaint in the 197 Docket and propounded substantial
6 discovery requests to McLeod and Qwest designed to determine whether they had a
7 discount agreement, which indicates that they may have been created as a result of the
8 Department's ongoing investigation of Qwest's unfilled agreements. All the day-to-day
9 business documents created before then, on the other hand, consistently reflect the
10 companies' joint understanding that the discount agreement existed.

11 **[BEGIN TRADE SECRET]** **[END TRADE SECRET]**

12 **Q: Did you find any other documents suggesting Qwest's explanation may be**
13 **correct?**

14 A: The evening before Ms. Deutmeyer's deposition, McLeod produced a document,
15 attached as Exhibit 462, entitled "Summary of Qwest agreement package." That
16 document states that **[BEGIN TRADE SECRET]** **[END TRADE**
17 **SECRET]**

18 **Q: Did you consider this document before you reached the conclusions about**
19 **which you testified here?**

20 A: Yes. Again, however, it doesn't change my conclusions. Ms. Deutmeyer
21 explained at her deposition that this document was created by Joe Terfler. It does not

1 appear that Mr. Terfler was involved in the negotiation of the October 26, 2000

2 agreements. [BEGIN TRADE SECRET] .³ [END TRADE SECRET]

3 **Q: If Qwest's explanation of its payments is correct, would that change your**
4 **conclusion that the Preferred Vendor Plan payments were actually discount**
5 **payments?**

6 **A: Possibly, but not necessarily. The mere fact that [BEGIN TRADE**
7 **SECRET] [END TRADE SECRET]**

8 **Q: If [BEGIN TRADE SECRET] [END TRADE SECRET],**
9 **would that change your conclusion regarding the existence of the oral discount**
10 **agreement?**

11 **A: No. There are simply too many documents created by both McLeod and Qwest**
12 **referring to the discount for it not to exist. There is simply no way to explain all of these**
13 **discount references absent a discount. Moreover, Qwest did actually purchase needed**
14 **services from Qwest, as reflected on Exhibit 448. It simply paid for those services**
15 **separately from the discount payments it made to McLeod.**

16 **Q: Assuming that you are correct about this agreement, why did Qwest give**
17 **McLeod this discount?**

18 **A: The documents suggest two reasons. First, as Mr. Fisher explains, the new Qwest**
19 **wanted to keep McLeod's traffic on Qwest's network, thereby insuring a revenue stream**
20 **for assets that might otherwise go unused. Without the discount, McLeod would have**

³ I should also note that Qwest produced, on July 24, a new document it says came from Audrey McKenney's files that appears to be a draft agreement from October 23, 2000 – the Monday after Qwest and McLeod reached the discount agreement. A true copy of the document is attached as Exhibit 463. [BEGIN TRADE SECRET]
[END TRADE SECRET]

1 proceeded with its plans to move as much traffic off of Qwest's network as possible as
2 quickly as possible. Many of the documents discussed earlier in my testimony contain
3 references to this reason.

4 Second, Qwest's acquiescence to the October 26, 2000 agreements, including the
5 discount agreement, was expressly contingent on McLeod's oral agreement not to oppose
6 Qwest's Section 271 application in Minnesota (or anywhere else). One of the most
7 important things Qwest could do to improve and grow its business was to obtain the
8 authority to provide interLATA services again in the areas where Qwest had to stop
9 providing such services after the merger. The importance of McLeod's agreement on this
10 point was noted in the September 19, 2000 term sheet attached as Exhibit 2 to Mr.
11 Fisher's affidavit. The Section 271 agreement is also discussed in several other exhibits
12 to my testimony, including the documents reflecting Qwest's internal consideration of the
13 deal with McLeod.

14 **Q: Does this conclude your written supplemental testimony?**

15 **A: Yes, it does.**

I declare under penalty of perjury under the laws of the United States of America
and the State of Minnesota that the foregoing is true and correct to the best of my
knowledge.

Executed this 24th day of July, 2002.

W. Clay Deanhardt

Signed before me this

Notary Public

Deanhardt Supplemental Testimony
MPUC Docket No. P-421/C-02-197; OAH Docket No. 6-2500-14782-2
MPUC Docket No. P-421/CI-01-1371; OAH Docket No. 7-2500-14486-2
July 24, 2002
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EXHIBIT 13

EXHIBIT "F"

LIST OF ALL CONFIDENTIAL UNFILED AGREEMENTS

- | | | |
|-----|-----------------|---|
| 1. | Eschelon (ATI) | Confidential Trade Secret Stipulation with US WEST dated 2/28/00 |
| 2. | Eschelon | Trial Agreement with Qwest dated 5/1/00 |
| 3. | Eschelon | Confidential Agreement with Qwest dated 11/15/00 |
| 4. | Eschelon | Confidential Amendment to Confidential Trade Secret Stipulation with Qwest dated 11/15/00 |
| 5. | Eschelon | Confidential Letter Agreement On Status of Switched Access Minute Reporting with Qwest dated 7/3/01 |
| 6. | Eschelon | Settlement Agreement with Qwest dated 3/1/02 |
| 7. | Eschelon | Letter from Qwest to Develop Implementation Plan dated 11/14/00 |
| 8. | Eschelon | Letter from Eschelon Regarding Reciprocal Compensation dated 8/1/01 |
| 9. | Eschelon | Letter from Qwest Regarding Daily Usage Information dated 11/15/00 |
| 10. | Eschelon | Confidential Purchase Agreement with Qwest dated 10/1/00 |
| 11. | Eschelon | Feature Letter from Qwest dated 11/15/00 |
| 12. | Eschelon | Confidential Billing Settlement Agreement with Qwest dated 11/15/00 |
| 13. | Eschelon (ATI) | Confidential Second Amendment To Confidential/Trade Secret Stipulation with US WEST dated 3/19/01 |
| 14. | Eschelon | Confidential Third Amendment to Confidential/Trade Secret Stipulation with Qwest dated 7/3/01 |
| 15. | Eschelon | Settlement Agreement Letter from Qwest dated 2/22/02 |
| 16. | Eschelon (Cady) | Stipulation and Agreement with US WEST dated 2/29/00 |
| 18. | Eschelon | Implementation Plan dated 7/31/01 |
| 19. | McLeodUSA | Confidential Letter Agreement with Qwest dated 10/26/00 |
| 20. | McLeodUSA | Confidential Settlement Document with US WEST dated 4/25/00 |
| 21. | McLeodUSA | Purchase Agreement dated with Qwest 10/26/00 |
| 22. | McLeodUSA | Confidential Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00 |
| 23. | McLeodUSA | Amendment to Confidential Billing Settlement Agreement with Qwest dated 10/26/00 |
| 24. | McLeodUSA | Confidential Settlement Agreement with US WEST dated 5/1/00 |
| 25. | McLeodUSA | Confidential Agreement to Provide Directory Assistance Database Entry Services with Qwest dated 2/12/01 |
| 26. | McLeodUSA | Confidential Billing Settlement Agreement with Qwest dated 9/29/00 |

27. McLeodUSA Confidential Amendment to Confidential Billing Settlement Agreement with Qwest dated 9/29/00
28. McLeodUSA Confidential Billing Settlement Agreement with US WEST dated 4/28/00
29. McLeodUSA Confidential Billing Settlement Agreement with Qwest dated 12/31/01
30. McLeodUSA Confidential Billing Settlement Agreement with Qwest dated 12/31/01
31. McLeodUSA Agreement for Withdrawal of Request for Reconsideration of Approval of Reciprocal Compensation ICA Amendment dated 9/18/00
32. McLeodUSA Confidential Agreement re: Escalation Procedures and Business Solutions, dated 10/26/00
33. Electric Lightwave Confidential Billing Settlement Agreement and Release with US WEST dated 12/30/99
34. Electric Lightwave Amendment No. One to Confidential Settlement Agreement and Release with US WEST dated 6/21/00
35. Electric Lightwave Amendment Number Two to Confidential Settlement and Release with Qwest dated 4/30/01
36. Electric Lightwave Confidential Settlement Document and Release with U S WEST dated 6/16/99
37. Electric Lightwave Confidential Billing Settlement Agreement with US WEST dated 4/27/01
38. Electric Lightwave Binding Letter Agreement with Qwest dated 7/19/01
39. Electric Lightwave Third Amendment to Confidential Billing Agreement with Qwest dated 7/19/01
40. Electric Lightwave Confidential Billing Settlement Agreement dated 4/26/02
41. WorldCom Confidentiality Agreement with Qwest dated 4/2/01
42. WorldCom Settlement Agreement with US WEST dated 11/18/99
43. MCIMetro (WCom) Confidential Billing Settlement Agreement dated 12/14/00
44. WorldCom Settlement Agreement with Qwest dated 11/30/00
45. WorldCom Confidential Billing Settlement Agreement dated 6/29/01
46. WorldCom Settlement Agreement with Qwest dated 6/29/01
47. WorldCom Business Escalation Agreement dated 6/29/01
48. WorldCom Confidential Billing Settlement Agreement with Qwest dated 6/29/01
49. Allegiance Confidential Billing Settlement Agreement dated 12/24/01
50. Allegiance Publishing Agreement for Official Listings with DEX dated 12/20/99
51. Allegiance Internetwork Calling Name Delivery Service Agreement with US WEST dated 3/23/00
52. Allegiance Directory Assistance Agreement with US WEST DEX dated 12/20/99
53. Allegiance Operator Service Agreement with Qwest dated 6/19/02
54. XO (Nextlink) Confidential Billing Settlement Agreement with US WEST dated 5/12/00

55.	XO	Confidential Billing Settlement Agreement with QCC dated 12/31/01
56.	XO	Confidential Billing Settlement Agreement with Qwest dated 12/31/01
57.	XO	Take or Pay Agreement with Qwest Services Corp. dated 12/31/01
58.	XO	Amendment to Confidential Billing Settlement Agreement
59.	Covad	US WEST Service Level Agreement Unbundled Loop Service dated 4/19/00
60.	Covad	Private Line Services Agreement dated 1/19/99
61.	Covad	Settlement Agreement (Facilities Decommissioning) 1/3/02
62.	Covad	Settlement Agreement (Equipment Theft) 2001
63.	Covad	Take or Pay Agreement 1/19/99
64.	Teleport (AT&T)	Confidential Billing Settlement Agreement and Release dated 3/13/00
65.	AT&T	Agreement dated 4/24/00 relating to Merger/Open Access Issues
66.	AT&T	Facility Decommissioning Reimbursement Agreement dated 12/27/01
67.	SBC	Letter from US WEST Regarding Proposed Settlement Terms dated 6/1/00
68.	SBC & NAS	Confidential Consent to Assignment & Collocation Change of Responsibility Agreement dated 6/1/01
69.	SBC	Facility Decommissioning Agreement with Qwest dated 10/5/01
70.	e-spire	Confidential Billing Settlement Agreement with Qwest dated 6/20/01
71.	e-spire	Confidential Agreement with Qwest dated 6/28/01
72.	Global Crossing	Settlement Agreement and Release with Qwest dated 9/18/00
73.	Global Crossing	Confidential Billing Settlement Agreement with Qwest dated 7/13/01
74.	GST	Confidential Billing Dispute Settlement Agreement and Release with US WEST dated 1/7/00
75.	Integra Telecom	Facility Decommissioning Agreement dated 11/20/01
76.	MAP Mobile	Confidential Billing Settlement Agreement with Qwset dated 10/19/00
77.	Metrocall	Confidential Billing Settlement Agreement dated 12/4/00
78.	Mountain Telec.	Confidential Billing Settlement Agreement with Qwest dated 8/30/00
79.	Nextel	Settlement Agreement and Mutual Release with Qwest dated 9/20/01
80.	Royal Paging	Confidential Billing Settlement Agreement dated 3/28/01
81.	Scindo Networks	Confidential Settlement Agreement with Qwest dated 5/4/01

- | | | |
|-----|------------------|--|
| 82. | Scindo Networks | Confidential Settlement Agreement with Qwest dated 8/10/01 |
| 83. | Sprint | Settlement Agreement with US WEST dated 12/18/00 |
| 84. | Ernest Comm. | Confidential Settlement Agreement and Release with Qwest dated 9/17/01 |
| 85. | VoiceStream | Confidential Billing Settlement Agreement dated 6/5/01 |
| 86. | Western Wireless | Settlement Agreement and Mutual Release with Qwest dated 4/17/00 |
| 87. | Williams | Facility Decommissioning Agreement with Qwest dated 10/2/01 |
| 88. | Z-Tel | Memo of Understanding with Qwest dated 5/18/01 |
| 89. | Paging Network | Confidential Billing Settlement Agreement with Qwest dated 4/23/01 |
| 90. | Time Warner | Confidential Billing Settlement Agreement with Qwest Dated 3/14/01 |
| 91. | Arch Comm. | Confidential Billing Settlement Agreement with Qwest Dated 6/16/01 |